IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.8653 OF 2004

Ratan M.Jawrawala and another).. Petitioners

Versus

Jamshed N.Guzdar and others).. Respondents

Ms.Z.S.Irani for the Petitioners.

Mr.P.S.Dani for Respondent Nos.1 to 5 and 7.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 4TH JULY 2005

P.C.:

. This Petition has been filed by the persons who claim to be the relatives of the original tenant Mr.Homi Faramroze Nalladaru. The original tenant Mr.Homi Nalladaru was allotted the suit premises by the Trustees of the Parsi Panchayat in Cusrow Baug, Mumbai. After the death of the original tenant, his wife Mrs.Almai Homi Nalladaru, who was Defendant No.1 before the trial Court, was accepted as a tenant. A Suit was filed by the Respondents against Mrs.Nalladaru for ejectment on the ground that she had unauthorisedly inducted the Petitioners into the suit premises. The Respondents also pleaded bona fide requirement of the suit premises in view of the long waiting list of persons from the Parsee community requiring residential premises. The original

Defendant expired during the trial. The necessary amendments were carried out in the Plaint. The Petitioners who were brought on record as party Defendants adopted the Written Statement filed by the original Defendant.

2. The Petitioners claim that the first Petitioner's grand-mother and the grand-mother of Mrs.Almai Homi Nalladaru were cousins and, therefore, they were her family members. On this basis, they claimed that they were tenants under Section 5(11)(c) of the Bombay Rent Act. The Courts below have found that the Petitioners came to the suit premises only in 1990 and that Mrs.Almai Nalladaru expired in 1993. The claim of the Petitioners that they were entitled to protection under Section 15(1)(c) of the Bombay Rent Act has not been accepted, firstly, because of there being no proximate relationship between the original Defendant and the Petitioners and, secondly, because the Petitioners had been staying in the residential quarters allotted to the first Petitioner by his Company which he was serving at Vikhroli. Therefore, if was held by both the Courts below that they could not be said to be the members of the original Defendant's family or residing with her for years together. I see no infirmity in the findings of the Courts below and, therefore, I find that the Petitioners could not be considered to be tenants under Section 5(11)(c) of the

Bombay Rent Act.

3. A submission is made on behalf of the Petitioners that the Trust which had allotted the suit premises of which the Respondents were trustees had not shown that any hardship would be caused to them if the suit premises were not handed back to them nor was it shown that the trust required the premises, bona fide, for allotment to the applicants who were waiting in queue for such premises. The judgment of the Gujarat High Court in *Kansara Abdulrehman Sadruddin* vs. *Trustees of the Maniar Jamat, Ahmedabad and others*, **1968 Gujarat Law Reporter Vol.IX** page 64 relied on by the Petitioners does not take the Petitioners' case any further. It is true that a Plaintiff suing in the capacity of a trust would have to prove that hardship has been caused to it by the tenants continuing in the suit premises. However, in the present case, the Petitioners cannot be considered to be tenants and, therefore, there would be no need to consider whether any hardship would be caused to them by decreeing the Suit. In view of this Petition dismissed.

4. Execution of the decree stayed for a period of three months from today on the condition that the Petitioners herein and other adult members of the family file the usual undertaking in this Court within two

weeks.